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7 Attorneys for Plaintiffs
8 ELIE ZAAROUR;
ROULA ZAAROUR

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10 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

11 ELIE ZAAROUR and ROULA ZAAROUR;

Master Docket: Misc. No. 21-mc-1230-JFC

12 Plaintiffs,

MDL No. 3014

13 v.

14 KONINKLIJKE PHILIPS N.V. et al,
15 Defendants.
16
**STIPULATION FOR VOLUNTARY
DISMISSAL OF DEFENDANT SUPERCARE
HEALTH, INC. WITHOUT PREJUDICE
AND AGREEMENT AS TO TOLLING;
[PROPOSED] ORDER**

17 Civil Action No. 2:22-cv-00898 JFC

18
Trial Date: None Set

19 Plaintiffs Elie Zaarour and Roula Zaarour and Defendant SuperCare Health, Inc. hereby stipulate
20 that Plaintiffs' entire action against Defendant SuperCare Health, Inc. shall be dismissed without prejudice
21 pursuant to the terms identified and agreed-upon below. Each side shall bear their own costs and fees,
22 including all attorney fees.

23 WHEREAS, Plaintiffs Elie Zaarour and Roula Zaarour ("Plaintiffs") commenced the above-
24 captioned action with the filing of a Complaint on April 26, 2022 in the Superior Court for the State of
25 California for the County of Los Angeles ("California Complaint") with the following named defendants:
26 (1) SuperCare Health, Inc., a California corporation; (2) Koninklijke Philips N.V., a Dutch multinational
corporation; (3) Philips NA, a Delaware corporation; and (4) Philips RS, a Delaware corporation
27 (collectively, "Defendants" and, together with Plaintiffs, the "Parties");
28

1 WHEREAS Defendants removed the above-captioned action to this Court on June 16, 2022
2 (hereinafter referred to as the “Action”);

3 WHEREAS counsel for Supercare Health, Inc. and counsel for Plaintiffs have engaged in
4 meaningful meet and confer efforts following the filing of a motion to dismiss by Defendant SuperCare
5 Health, Inc.;

6 WHEREAS, among the issues discussed in those meet and confer sessions was the continued
7 inclusion in this Action of Defendant SuperCare Health, Inc. (the “Tolling Defendant”);

8 WHEREAS the Tolling Defendant has indicated a willingness to enter into the following
9 agreement governing tolling of the statute of limitations in exchange for Plaintiffs’ dismissal without
10 prejudice of the Tolling Defendant from this action pursuant to the terms of the following agreement
11 (hereinafter referred to as the “Agreement”).

12 WHEREAS, without admitting or denying the validity of any challenges the Tolling Defendant
13 may make to the California Complaint, or the other Complaints currently operative in this MDL,
14 jurisdiction, or venue, and in an effort to narrow the issues at this early stage of the Action, Plaintiffs are
15 willing to dismiss the Tolling Defendant from this Action without prejudice provided their rights to
16 reinstate, join, or otherwise resume this Action or a separate action against the Tolling Defendant is in no
17 way prejudiced.

18 IT IS HEREBY STIPULATED and AGREED, by and among counsel of record for Plaintiffs and
19 Tolling Defendant, that:

20 1. The Action shall be dismissed, without prejudice, as to the Tolling Defendant, with each
21 party to bear their own costs and attorneys’ fees.

22 2. Plaintiffs reserve the right, in their sole discretion, to seek leave of Court in this MDL to
23 rejoin Tolling Defendant, reinstate their allegations against the Tolling Defendant, or file a separate action
24 in another forum and jurisdiction against Tolling Defendant, and the Tolling Defendant reserves its
25 respective rights in its sole discretion to assert any defenses or counterclaims against Plaintiffs except as
26 provided herein. Neither Plaintiffs’ voluntary dismissal of Tolling Defendant nor Tolling Defendant’s
27 agreement to the terms of this stipulation shall be asserted or construed to be a waiver of any claim or
28 defense among any of the Parties.

1 3. If Plaintiffs file a complaint against the Tolling Defendant arising out of or relating to the
2 Action or the allegations contained therein, or reinstate the Tolling Defendant in the Action by motion to
3 join, amend, or otherwise, the Tolling Defendant agrees that any defenses based on laches, estoppel,
4 statute of limitations, or the passage of time will be tolled as of the date of the entry of this Order and any
5 statute of limitations applicable to any claim or defense will have deemed to have been tolled, with the
6 running of said statute of limitations to begin upon the date that Plaintiffs rejoin Tolling Defendant to this
7 action, reinstate their allegations against Tolling Defendant in this action, or commence a separate action
8 from the date of the entry of the Order confirming this Stipulation for Voluntary Dismissal Without
9 Prejudice.

10 4. For purposes of calculating the running of any applicable statute of limitations, if Plaintiffs
11 file a complaint against the Tolling Defendant arising out of or relating to the Action or the allegations
12 contained therein, or reinstate the Tolling Defendant in the Action by motion to join, amend, or
13 otherwise, both Plaintiffs and the Tolling Defendant agree that any rights Tolling Defendant has to any
14 defenses based on laches, estoppel, statute of limitations, or the passage of time are tolled at the date this
15 Order confirming this Stipulation for Voluntary Dismissal Without Prejudice is entered.

16 5. Plaintiffs and the Tolling Defendant reserve all claims, defenses, and rights under any
17 applicable procedural or substantive law governing the present Action or any future action that could be
18 potentially brought by Plaintiffs pursuant to this Voluntary Stipulation to Discontinue Without Prejudice.

19 6. This Agreement represents the entire agreement by and between the parties hereto on the
20 subject matters contained herein, and supersedes any and all prior agreements and understandings. This
21 Agreement may not be modified except by a writing signed by all of the Parties to be bound.

22 7. Each person signing this Agreement represents and warrants that he or she is expressly
23 authorized and empowered to sign on behalf of and bind the Parties on whose behalf this document has
24 been executed. If this Agreement is executed by counsel, counsel represents and promises that counsel is
25 expressly authorized to execute this Agreement on behalf of the Party or Parties counsel represents.

26 8. For the purposes of resolving any disputes arising out of this Agreement, the Agreement
27 shall be deemed to have been drafted by all Parties, none of whom may assert that it should be construed
28 against the other.

1 9. This Tolling Agreement may be executed in counterparts, including by signature
2 transmitted by facsimile or by electronic signature with consent of the signatory.

3 IT IS SO STIPULATED

4

5 Dated: February 14, 2023

6 By: /s/ Phil Johnson
7 PHIL JOHNSON
8 Attorney for Plaintiffs ELIE ZAAROUR &
9 ROULA ZAAROUR

10 Dated: February 14, 2023

11 By /s/Stuart H. Sostmann
12 STUART H. SOSTMANN, ESQ.
13 PA ID No. 84065
14 Counsel for Defendant – Supercare Health, Inc.

15

16 **ORDER**

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18 GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT Defendant
19 Supercare Health, Inc. is dismissed without prejudice, each party to bear their own fees and costs,
20 including attorneys' fees.

21 Date: February 17, 2023

22 By the Court: s/Joy Flowers Conti
23 Joy Flowers Conti
24 Senior United States District Court Judge